IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Bail Appl..No. 6443 of 2007()

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CRIME NO.33/07 OF ERUMAPETTY POLICE STATION IN THRISSUR DISTRICT.

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PETITIONER/1ST ACCUSED:

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M.F. VINCENT, S/O. FRANCIS,
MURINGATHERY HOUSE, KUTTANCHERY P.O.,
ERUMAPETTY, THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: STATE OF KERALA/COMPLAINANT:

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THE STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
ERUMAPETTY POLICE STATION THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY P.P. SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A. No. 6443 OF 2007**

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**Dated this the 24th day of October, 2007**

**ORDER**

Application for anticipatory bail The petitioner is the 1st accused. Altogether, there are 4 accused persons. They face allegations for offences punishable under Secs.406 and 420 of the IPC.

2. The crux of the allegations against the accused persons is that they, who ran an establishment in the name of "M/s Muringathery Finance" had deceived the subscribers by receiving huge amounts as deposits from them with no serious intention of returning the same. The depositors were fraudulently induced to part with the amounts by the petitioner who had no legal authority whatsoever to run such a financial activity. It is the case of the Investigator that the accused entertained the fraudulent culpable intention even when they

entered into the transaction and induced the gullible depositors to part with money. The depositors have not been repaid also. This obliged the depositors to make complaints before the police. A crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has no active role in the conduct of the business. Even assuming that the allegations are true, it only reveal the breach of a civil liability to repay the amounts. In these circumstances, the petitioner may be granted anticipatory bail, it is prayed.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the transaction in question cannot be reckoned to result in the mere breach of a civil liability. The mere fact that the aggrieved shall have the rights under the civil law to recover the amount does not obliterate the culpable liability of the offender. In the instant case, fraudulent intention to deceive the customers is evident from the totality of the facts and circumstances. At any rate, this is not a fit case where the extraordinary equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked. The petitioner may be directed to resort to the usual and normal

course of appearing before the Investigating Officer or the learned Magistrate. He may be directed then to seek regular bail.

5. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. The learned Sessions Judge has dismissed the application. It is true that for another co-accused, at some earlier point of time, anticipatory bail had been granted by the Sessions Court. I am not satisfied from that circumstance alone that the petitioner herein should also be granted anticipatory bail.

6. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

**(R. BASANT, JUDGE)**

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**//true copy// P.S. to Judge**